

MT LEGISLATIVE HISTORY

Chapter 464 1929

Bill H (S) 374

Original bill & hist. ✓C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) FEB 12 ✓C

Hearing Date(s) MAR 6 ✓C

 C

MAR 16 ✓C

 C

BEST COPY
AVAILABLE

 C

 C

 C

Date Out FEB 12 ✓C

 C

Did this bill originate in an interim committee? Yes No

Committee

Report

CHAPTER NO. 464

SENATE BILL NO. 374

INTRODUCED BY VAN VALKENBURG

IN THE SENATE

February 5, 1979	Introduced and referred to Committee on Judiciary.
February 12, 1979	Committee recommend bill do pass as amended. Report adopted.
February 13, 1979	Printed and placed on members' desks.
February 14, 1979	Motion pass consideration.
February 15, 1979	Second reading, do pass.
February 16, 1979	Considered correctly engrossed.
February 17, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading concurred in as amended.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in as amended.
----------------	---

March 26, 1979

Second reading, pass consideration until March 28, 1979.

March 28, 1979

Second reading, amendments adopted.

March 29, 1979

Third reading, amendments adopted. Sent to enrolling.

Reported correctly enrolled.

1 *Sen. Valtubery* BILL NO. *374*
2 INTRODUCED BY *Sen. Valtubery*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT A
5 DIVORCE DECREE MAY BE MODIFIED TO ALLOW MAINTENANCE OR
6 SUPPORT EVEN THOUGH IT WAS NOT ALLOWED IN THE ORIGINAL
7 DECREE; AMENDING SECTION 40-4-208, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 40-4-208, MCA, is amended to read:

11 "40-4-208. Modification and termination of provisions
12 for maintenance, support, and property disposition. (1)
13 Except as otherwise provided in 40-4-201(6), the--provisions
14 of--any a decree respecting maintenance or support may be
15 modified by a court as to maintenance or support only as to
16 installments accruing subsequent to the motion for
17 modification and either:

18 (a) upon a showing of changed circumstances so
19 substantial and continuing as to make the terms
20 unconscionable; or

21 (b) upon written consent of the parties.

22 (2) A decree that does not award support or
23 maintenance may be modified under subsection (1) to provide
24 for such maintenance or support.

25 (3) The provisions as to property disposition may not

1 be revoked or modified by a court, except:

2 ~~(1) (a)~~ upon written consent of the parties; or

3 ~~(1) (b)~~ if the court finds the existence of conditions
4 that justify the reopening of a judgment under the laws of
5 this state.

6 ~~(2) (a)~~ Unless otherwise agreed in writing or expressly
7 provided in the decree, the obligation to pay future
8 maintenance is terminated upon the death of either party or
9 the remarriage of the party receiving maintenance.

10 ~~(2) (b)~~ Unless otherwise agreed in writing or expressly
11 provided in the decree, provisions for the support of a
12 child are terminated by emancipation of the child but not by
13 the death of a parent obligated to support the child. When
14 a parent obligated to pay support dies, the amount of
15 support may be modified, revoked, or commuted to a lump-sum
16 payment, to the extent just and appropriate in the
17 circumstances."

-End-

SB 374
-2- INTRODUCED BILL

COMMITTEE ON JUDICIARY - SENATE

<u>SENATE</u>	ENTERED	DATE	OUT OF	DO PASS	DO NOT	DO PASS	BE CON-	BE CONC. IN	BE NOT CON-
BILL NO.	COMM.	CONSIDERED	COMM.	DATE	PASS DATE	AS AMEND. DATE	CURRED IN DATE	AS AMENDED DATE	CURRED IN DATE
5. SB-301	1/31/79	2/13/79	2/19/79			2/18/79			
6. SB-322	1/31/79	2/7/79	2/8/79		2/8/79				
7. SB-341	2/2/79	2/9/79	2/9/79	2/9/79					
8. SB-345	2/2/79	2/9/79	2/12/79			2/12/79			
9. SB-376	2/2/79	2/13/79	2/16/79			2/15/79			
10. SB-378	2/2/79	2/13/79	2/12/79			2/18/79			
11. SB-379	2/3/79	2/10/79	Tabled 2/15/79						
12. SB-355	2/3/79	2/12/79	2/12/79	2/12/79					
13. SB-357	2/3/79	2/12/79	Tabled 2/15/79						
14. SB-364	2/5/79	2/10/79	2/10/79			2/10/79			
15. SB-367	2/5/79	2/12/79	2/12/79	2/12/79					
16. SB-374	2/5/79	2/12/79	2/12/79			2/12/79			
17. SB-376	2/6/79	2/14/79	2/14/79			2/14/79			
18. SB-380	2/6/79	2/14/79	2/14/79	2/14/79					
19. SB-332	2/6/79	2/15/79	2/16/79			2/15/79			
20. SB-386	2/6/79	2/15/79	2/19/79			2/19/79			

Use a separate sheet for Senate

a full partnership.

There were no further proponents and no opponents. The hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 374:

Senator Van Valkenburg gave an explanation of this bill, which is an act to clarify that a divorce decree may be modified to allow maintenance or support even though it was not allowed in the original decree. He stated that when a default decree is entered, many times the judge is not aware of all the circumstances of the case and he may not have awarded support or maintenance because it was not asked for at that time. He said that at the time of the divorce, it is an emotional and traumatic experience; and that one party may not employ a lawyer and at a later date, this bill would allow the court to award maintenance or support.

There were no further proponents and no opponents.

Senator Turnage noted that there was no limitation as to when you can bring this up. Senator Van Valkenburg said this might be the period of time when people get over this emotional period they go through when involved in a divorce - usually one year or two.

Senator Towe moved that on page 1, line 23, after the word "be" that the bill be amended by inserting "within two years of the date of the decree." The motion passed unanimously.

Senator Van Valkenburg moved that the bill do pass as amended. The motion carried unanimously.

Senator Turnage moved that the committee request the drafting of a bill 40-4-219 to eliminate the provision that a custody decree cannot be modified earlier than two years and to eliminate that restriction on time, and also to permit the district court to act ex-arte on temporary custody matters.

The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 357:

Bob Pyfer, attorney from the Legislative Council, gave the committee information on this bill. He stated that the bill requires the registration of foreign partnerships, increases the rights and remedies of limited partnerships as against general partnerships. He said that the states are concerned because the Internal Revenue Service has been somewhat skeptical as to whether the corporate income tax should apply in these cases, they felt that it makes them somewhat like a shareholder and IRS says that they are looking more and more like a corporation. He stated that one thing that might be appropriate would be a delayed effective date. He said if this bill passes, Montana will be the first state to adopt this. There was some question about the bill and Senator Lensink requested Bob Pyfer to get some further information.

Date 2/20/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Bills to be heard by Senate Judiciary Committee
on Monday, February 12, 1979

SB 374 (Van Valkenburg)

Proposed bills: provides that a court can modify a divorce decree to allow maintenance or support even though the original divorce decree did not provide for such.

February 12

19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 374

Respectfully report as follows: That Senate Bill No. 374,

introduced bill, be amended as follows:

1. Page 1, line 23.

Following: "modified"

Insert: "within 2 years of the date of the decree"

And, as so amended,

DO PASS

— Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 293	revise MT youth court act	2/19	Thomas	Tues. 3/6	concur	3/5
SB 345	procedure following an acquittal on grounds of mental disease	2/19	Towe	Monday 3/5	Table	3/20
SB 355	minimum compensation for personal reps. of estates	2/19	Stimatz	Weds 3/7	be concurred in	3/14
SB 367	jurisdiction of the district courts - weapons offenses	2/19	VValkenburg	Monday 3/5	be concurred in	3/8
SB 374	divorce decree may be modified for support, etc.	2/19	VValkenburg	Tues. 3/6	as amended be concurred in	3/16
SB 364	providing for fines in felony criminal cases.	2/20	S. Brown	Weds. 3/7	not concurred in	3/15

not his parents. If we are looking at just straight dollars we have contracts over \$12,000 dollars and over \$6,000 has come back to the victims. The last thing is the order of commitment and he explained.

REPRESENTATIVE CONROY: How would this work with regard to making the youth pay.

MR. METZGER: We realize the youth cannot pay for it. Discussion followed about how this might be accomplished.

Discussion about page 9 and the stricken language.

Then followed discussion about the \$1500 limit.

There was no further discussion and no further questions, the hearing closed on

Senate Bill No. 293.

SENATE BILL NO. 382: Senator Thomas. This bill was requested by the County Attorney of Yellowstone and was part of a study by the Crime Control Board. It removes the 15 days on a continuance.

TOM HONZEL: County Attorneys Association. This is not a county attorneys bill but it did come out of the youth counsel and the study made on Youth Court legal problems. One of the problems has been the strict time limits. As a general rule we can get most of these cases heard within 15 days but sometimes not. He elaborated further.

KAREN MIKOTA: League of Women Voters. We do feel there should be some maximum limit rather than leaving it open. We do oppose the bill as it now stands.

REPRESENTATIVE LORY: With the amendment the Senate put on, you can't have a continuance unless the youth has absconded. Is this true.

MR. HONZEL: If the youth is held in custody it is imperative that you have the hearing right away. It would only apply to those who are not in custody.

There was no further discussion and the hearing closed on Senate Bill No. 382.

SENATE BILL NO. 374: Senator Van Valkenburg. This bill would change the divorce law slightly. It modifies and terminates provisions for maintenance, support, and property disposition, upon a showing of changed circumstances so

substantial as to make the terms unconscionable. If there is no provision for the spouse it can be modified within two years. Quite often during the breakup of a marriage they may overlook real needs and then about a year later they wake up and find they don't have anything to live on, as an example. This does not go on forever. He went into examples.

REPRESENTATIVE KEEDY:
limitation on the bill.

If there are circumstances which can change, why do you want to put a two year

SENATOR VAN VALKENBURG:

Discussion about the original decree and what might make a change in circumstance

Discussion about whether there should be a two year limitation. Mr. Van Valkenburg commented that Senator Turnage thought there should be a time limit. Then followed considerable discussion about an unconscionable circumstance and changed circumstances.

Representative Kemmis asked about a possible amendment on Page 1, lines 23 and 24. There was some discussion, and the hearing closed on Senate Bill 374.

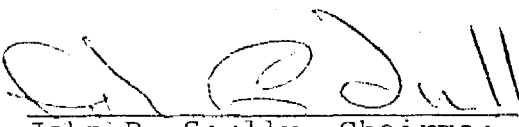
SENATE BILL NO. 423:

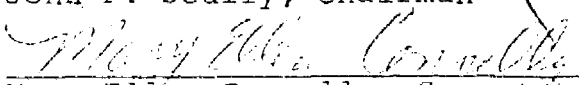
Senator Van Valkenburg. This bill would release liens held by the Department of Social and Rehabilitation Services. The Code Commissioner has interpreted this as language of a temporary nature and would not codify this section of the law. The SRS has periodically been asked to release these liens. He said that on line 15 "shall be" was changed to "are hereby". This would allow the release of the liens. The liens deal with property assistance grants and are liens on real property.

There was discussion about what the original language said. It was mentioned that the intent was to abolish the liens.

With no further discussion the hearing closed on Senate Bill 423.

The meeting adjourned at 9:10 and the committee went into executive session.


John P. Scully, Chairman


Mary Ellen Connelly, Secretary

sections 5 and 6 on page 4. Representative Keedy moved to amend the title. The motion to amend carried with Representative Keedy voting "no".

Representative Roth moved "not concurred in as amended". The motion failed.

Representative Roth moved "be concurred in as amended". The motion failed because of a tie vote, 7 yes, 7 no, 2 abstaining and 3 absent. The vote was again called and the motion "not concurred as amended" carried.

SENATE BILL NO. 284:

Representative Keedy moved to insert the language that the Senate had stricken.

The motion carried with Representatives Rosenthal, Anderson and Lory voting "no".

Representative Teague moved "be concurred in as amended". The motion carried with Representative Lory abstaining. Representative Pavlovich will carry.

SENATE BILL NO. 348:

Representative Keedy moved to amend line 13, by striking "may" and inserting "need".

The motion carried with the vote unanimous. Representative Curtiss voted to amend subsection 1, lines 16, 17, and 18. The motion failed. Representative Iverson moved "not concurred in as amended". The motion carried with a roll call vote, 10 yes, 6 no and 3 absent.

SENATE BILL NO. 374:

Representative Kemmis moved prepared amendments. The motion carried with the

vote unanimous after some discussion.

Representative Uhde moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Kemmis will carry on the floor.

SENATE BILL NO. 380:

Representative Keyser moved "be concurred in as amended". The motion carried with

the vote unanimous. Representative Lory will carry.

SENATE BILL NO. 202:

Representative Lory moved "be concurred in". The committee discussed the bill a

some length. Representative Anderson moved to pass for the day. The motion carried with the vote unanimous.

SENATE BILL NO. 250:

Representative Curtiss moved to amend.

The motion carried with the vote unanimous

(copy attached) Representative Lory moved "be concurred in as amended". The motion carried with Representative Anderson voting "no". Representative Scully will carry the bill on the floor.

March 19, 1979

HOUSE OF REPRESENTATIVES

Primary Committee amendments to Senate Bill 374, 3rd Reading
as follows:

Page 1, line 17.
Following: "modification"
Strike: "and either:"
Insert: "."

Page 1, line 18.
Following: line 17
Insert: "(2) (a) Whenever the decree proposed for
modification does not contain provisions relating to
maintenance or support, modification under subsection
(1) may only be made within 2 years of the date of
the decree.
(b) Whenever the decree proposed for modification
contains provisions relating to maintenance or support,
modification under subsection (1) may only be made:"

Page 1, line 18.
Following: line 17
Strike: "(a)"
Insert: "(i)"

Page 1, line 21.
Following: line 20
Strike: "(b)"
Insert: "(ii)"

Page 1, lines 22 through 25.
Strike: lines 22 through 25 in their entirety.

AS AMENDED,
CONCURRED IN

SENATE BILL NO. 374

INTRODUCED BY VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT A DIVORCE DECREE MAY BE MODIFIED TO ALLOW MAINTENANCE OR SUPPORT EVEN THOUGH IT WAS NOT ALLOWED IN THE ORIGINAL DECREE; AMENDING SECTION 40-4-208, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-208, MCA, is amended to read:

"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), the provisions of any a decree respecting maintenance or support may be modified by a court as to maintenance or support only as to installments accruing subsequent to the motion for modification, and either:

(1) WHENEVER THE DECREE PROPOSED FOR MODIFICATION DOES NOT CONTAIN PROVISIONS RELATING TO MAINTENANCE OR SUPPORT, MODIFICATION UNDER SUBSECTION (1) MAY ONLY BE MADE WITHIN 2 YEARS OF THE DATE OF THE DECREE.

(2) WHENEVER THE DECREE PROPOSED FOR MODIFICATION CONTAINS PROVISIONS RELATING TO MAINTENANCE OR SUPPORT, MODIFICATION UNDER SUBSECTION (1) MAY ONLY BE MADE:

(a) upon a showing of changed circumstances so

substantial and continuing as to make the terms unconscionable; or

(b) upon written consent of the parties.

~~(1) A decree that does not award support or maintenance may be modified within 2 years of the date of the decree under subsection (1) to provide for such maintenance or support.~~

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

-End-

-2-

SB 374

REFERENCE BILL